

United States Courts  
Southern District of Texas  
FILED

*September 06, 2019*

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

CABOT-CHASE LTD. and  
ROCKBAY PROPERTIES, LTD  
Plaintiff

v.

WRIGHT NATIONAL FLOOD  
INSURANCE SERVICES, LLC d/b/a  
WRIGHT NATIONAL FLOOD  
INSURANCE COMPANY d/b/a  
WRIGHT FLOOD  
Defendant

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CASE NO. \_\_\_\_\_

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT AND JURY DEMAND

To the Honorable Judge of Said Court:

1. Comes now the Plaintiffs, Cabot-Chase, Ltd. and Rockbay Properties, Ltd, ("Cabot-Chase), and files this Original Complaint and Jury Demand complaining of and against Defendant, Wright National Flood Insurance Services, LLC d/b/a Wright National Flood Insurance Company d/b/a Wright Flood ("Wright"), and in support hereof would respectfully show unto the Court the following:

**Jurisdiction and Venue**

2. The action arises under the National Flood Insurance Act, 42 U.S.C. §4001, et.seq., pursuant to the insurance contract issued to the Plaintiffs. This action, having arisen under an applicable federal statute, namely 42 U.S.C. §4072, requires the application of federal law pursuant to the general federal jurisdiction provisions of 28 U.S.C. §1331.

3. Venue is properly in this District pursuant to 42 U.S.C. §4053 and/or §4072 in that

the insured property made the basis of this action is located at 1896 Bay Shore Drive, Rockport, Aransas County, Texas 78382 and situated within this District.

#### **Parties**

4. Plaintiff, Cabot Chase, Ltd. is a Limited Partnership formed under the laws of the State of Texas and is an owner of the property located at 1896 Bay Shore Drive, Rockport, Texas 78382 ("the Property"). Service of process is neither requested nor necessary at this time. Chase Equities, Inc is a General Partner to Cabot Chase, Ltd. and Jimmy Nassour is the President of Chase Equities, Inc.

5. Plaintiff, Rockbay Properties, Ltd. is a Limited Partnership formed under the laws of the State of Texas and is an owner of the property located at 1896 Bay Shore Drive, Rockport, Texas 78382 ("the Property"). Service of process is neither requested nor necessary at this time.

6. Defendant Wright National Flood Insurance Services, LLC d/b/a Wright National Flood Insurance Company d/b/a Wright Flood is foreign entity formed under the laws of the State of California and organized in Delaware. Defendant can be given notice of this lawsuit by serving its registered agent of service, CT Corporation System at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

#### **Factual Background**

7. In this Complaint whenever it is alleged that the Defendant did any act or thing, it is meant that the Defendant's officers, agents, servants, employees, attorneys or representatives did such act or thing and that at the time such act or thing was done, it was done with the full, expressed, implied or apparent authorization or ratification of the Defendant or was done in the normal and routine course and scope of employment of the Defendant's officers, agents, servants, employees,

attorneys or representatives.

8. Among other elements of damage, by this lawsuit, Cabot Chase sees to recover losses sustained as a result of flood damage to the contents of the property at 1896 Bay Shore Drive in Rockport, Texas.

9. On or about August 25, 2017, the Property sustained flood damage as a result of Hurricane Harvey. The Property was insured under Policy Number 42115076908405 issued by Wright National Flood Insurance Company to cover direct physical loss by or from flood.

10. In order to keep the property from being further damaged by the effects of Hurricane Harvey, its aftermath and any subsequent weather related events, Plaintiff had the damage repaired and reported the claim to the insurer on July 13, 2018.

11. The Defendant has denied Plaintiff's claims. Copies of the two denial letters are attached hereto as Exhibit "A" and incorporated herein for all purposes.

#### **Causes of Action**

12. Cabot Chase repeats and incorporates, by reference, the allegations of paragraphs 1 through 11 above.

13. Cabot Chase alleges that in all of the conduct complained of herein, all employees, servants, agents and representatives of Wright had actual, implied or apparent authority to act on behalf of Wright.

14. Cabot Chase further alleges that all conditions precedent to recovery herein have been performed or have occurred.

15. Cabot Chase alleges that the actions and conduct of Wright constitute a breach of contract. Cabot Chase purchased insurance from Wright. The insurance contract provides insurance

coverage for the Property against loss from among other things: flood. Cabot Chase paid all premiums for the Policy, reported the loss to Wright, and requested adjustment of the claim. Despite compliance with the Policy conditions, Wright has failed and refused and continues to fail and refuse to pay the full amount due under the Policy for Cabot-Chases' claim. As a result Wright has breached the contract of insurance and as a direct and proximate consequence of Wright's breach of contract, Cabot Chase has suffered actual damages.

#### **Damages**

16. As a result of the actions and conduct complained of herein, Cabot Chase is entitled to the recovery of all actual damages sustained in an amount that exceeds the minimum jurisdictional limits of this Court. These damages include, but are not limited to damages to the building located at 1896 Bay Shore Drive, Rockport, Texas and its contents.

17. Cabot Chase is entitled to recovery of pre-judgment and post-judgment interest herein at the maximum amount allowed by the common and statutory laws of the State of Texas.

18. Cabot Chase is further entitled to the recovery of costs of court.

#### **Demand for Jury Trial**

19. Pursuant to Rule 38 Fed.R.Civ.P., Cabot Chase demands a jury trial on all issues triable by a jury.

#### **Prayer**

20. Wherefore, Premises Considered, Plaintiffs Cabot-Chase, Ltd. and Rockbay Properties, Ltd. ("Cabot Chase"), pray that the Defendant, Wright National Flood Insurance Services, LLC d/b/a Wright National Flood Insurance Company d/b/a Wright Flood ("Wright"), be cited to appear and answer herein, and that upon full and final trial herein, Cabot Chase recover from Wright,

all actual damages sustained as a result of the actions of Wright, along with damages attributed to costs of court, pre-judgment and post-judgment interest and such other and further relief, whether general or special, at law and in equity, to which Plaintiffs may show themselves justly entitled by this pleading or property amendment hereto.

Respectfully submitted,

CABOT CHASE, LTD.

By Chase Equities, Inc.

By: 

Jimmy Nassour, President of  
Chase Equities, Inc.

3839 Bee Cave Road, Suite 100

Austin, Texas 78746

Tel: (512)474-2900

Fax: (512)4744547

[Jimmy@jimmynassour.com](mailto:Jimmy@jimmynassour.com)



*We are flood.®*

July 16, 2018

TD & Cabot-Chase Ltd Rockbay Properties L  
3825 Lake Austin Blvd STE 401  
Austin, TX 78703

RE: Insured: TD & Cabot-Chase Ltd Rockbay Properties L  
Claim Number: 18 0001779  
Date of Loss: 8/25/17  
Policy Number: 42 1150769084 05  
Location of Loss: 1896 Bay Shore Dr Rockport, TX 78382

Dear TD & Cabot-Chase Ltd Rockbay Properties L:

Wright National Flood Insurance Company acknowledges receipt of your notice of claim for flood damage. You reported your loss to Wright Flood on 7/13/18 advising us that the loss occurred on or about 8/25/17.

This loss was reported to us more than 322 days after the reported date of loss. The Standard Flood Insurance Policy requires that a Proof of Loss be filed timely and received by us within 60 days of the date of loss. Please review your policy, specifically:

#### VII. GENERAL CONDITIONS

##### D. Amendments, Waivers, Assignment

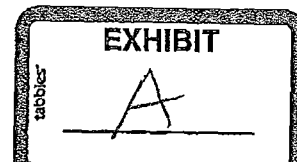
This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy constitutes a waiver of any of our rights.

##### J. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;
4. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

Wright National Flood Insurance Company – Claims Division  
P.O. Box 33084, St. Petersburg, FL 33733-8064  
Ph. 800.725.9472 | F. 877.270.4329



- a. The date and time of the loss;
  - b. A brief explanation of how the loss happened;
  - c. Your interest (for example "owner") and the interest, if any, of others in the damaged property;
  - d. Details of any other insurance that may cover the loss;
  - e. Changes in title or occupancy of the covered property during the term of the policy.
  - f. Specifications of damaged **buildings** and detailed repair estimates;
  - g. Names of mortgages or anyone else having a lien, charge, or claim against the covered property;
  - h. Details about who occupied any insured **building** at the time of loss and for what purpose; and
  - i. The inventory of damaged personal property described in J.3. above
5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
  6. You must cooperate with the adjuster or representative in the investigation of the claim.
  7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.
  8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
  9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

We agree to investigate your claim to conclusion under a reservation of rights. Once our investigation is complete, our findings will be sent to the Federal Insurance and Mitigation Administration for review. The Federal Government controls this program. We are bound by the rules and regulations of the program as well as the language in the policy. Based on the age of the claim, and the fact that the requirements of Section VII, Paragraph J were not met, any authorization to pay for covered damages that are a direct physical loss by or from flood would need to come from the Administrator of the Federal Insurance and Mitigation Administration.

Page 3 of 3

No act of any Company representative while investigating, negotiating settlement of this claim, or defending a lawsuit, shall be construed as waiving any company rights. The Company reserves its rights under the policy to deny coverage to you or anyone claiming coverage under the policy. There may be more or other reasons why coverage does not apply. We do not waive our rights to deny coverage for any other valid reason which may arise. You will be advised as to the outcome of our investigation once it has been completed.

If you have any further questions or concerns, please fax your inquiry to 1-877-270-4329 or call me at 1-800-725-9472, ext. 5450.

Regards,

Sinja Sobers  
Claims Technical Representative  
Wright National Flood Insurance Co  
1-800-725-9472 x 5450

Cc GSM Insurors  
Po Box 1478  
Rockport, TX 78381





*We are flood.\**

**DENIAL OF CLAIM**

September 5, 2018

Rockbay Properties LTD & Cabot-Chase LTD  
C/O Stephen Oyster  
3825 Lake Austin Boulevard Suite 401  
Austin, TX 78703-3508

RE: Insured: , Rockbay Properties LTD & Cabot-Chase LTD  
C/O Stephen Oyster  
Claim Number: 18 0001779  
Date of Loss: 08/25/2017  
Policy Number: 42115076908405  
Location of Loss: 1896 Bay Shore Drive Rockport, TX 78382-3705

Dear Policyholders:

We are in receipt of the adjuster's report regarding the above captioned date of loss. The adjuster reported you and your representative's statement of a general condition of flood on your property for the reported date of loss. The claim was not reported to Wright National Flood Insurance Company until July 13, 2018; after repairs of the reported damages were completed. Please be advised that your failure to comply with the policy language to promptly report this loss and allow us to examine the damaged property has prejudiced us in properly investigating this claim to associate the alleged damages to be a **direct physical loss by or from flood**. Based on the information we have received, we must respectfully deny your claim.

Please refer to your Standard Flood Insurance Policy Dwelling Form which explains the coverage, conditions, and limitations, definitions and exclusions. A digital copy of the Standard Flood Insurance Policy - Dwelling Form can be accessed online at: <https://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-policy-forms>

The Insuring Agreement of your policy reads in part:

**We will pay you for direct physical loss by or from flood to your insured property if you:**

1. Have paid the correct premium;
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

**II. DEFINITIONS**

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is your property) from:
  - a. Overflow of inland or tidal waters;
  - b. Unusual and rapid accumulation or runoff of surface waters from any source;
  - c. Mudflow.
2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in A.1.a. above.
12. **Direct Physical Loss By or From Flood. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.**

Please refer to the Dwelling Form -- Standard Flood Insurance Policy, VII. **GENERAL CONDITIONS**, which reads in relevant part:

**J. Requirements in Case of Loss**

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

Wright National Flood Insurance Company expressly reserve our rights to assert all other rights or defenses that we may have to this claim even though not enumerated above. Also, we do not waive, nor relinquish any of our rights under the policy of insurance and governing Federal law.

If you have any questions concerning this matter, please contact our office.

Regards,

Sheila Jones  
CAT Support Adjuster  
Wright National Flood Insurance Company  
(800) 725-9472 x 7787



JS 44 (Rev. 02/19)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Cabot Chase, Ltd.  
Rockaway Properties, Ltd.

(b) County of Residence of First Listed Plaintiff TRAVIS  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Wright National Flood Insurance  
Services, LLC et al

County of Residence of First Listed Defendant Hent, Del.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |   |                                       |   |                                |                                |
|---|---|---------------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1        | Incorporated or Principal Place of Business in This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2                | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3                | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC § 4601, et seq.  
 Brief description of cause:  
denial of flood insurance claim

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.  
 DEMAND \$

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/5/19

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE